United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

75-6118

DOCKET NO. ~~75-8217~~

B

REV. DONAID L. JACKSON

Plaintiff - Appellant,

vs.

THE STATLER FOUNDATION, et al,

Defendants- Appellees.

P/S

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF ON BEHALF OF PLAINTIFF - APPELLANT,
WITH APPENDIX

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QUESTION PRESENTED FOR REVIEW:

1. The Right of Plaintiff to represent himself, and Judge Curtins Order directing that Plaintiff Obtain Counsel, violated Plaintiffs Civil Rights.

2. That the District Court Appoints a Trustee or Director to the Defendant Buffalo Foundation for the past 52 years, the District Court, is a Defendant, while at the same time presiding over the lawsuit, which deprived Plaintiff a fair an impartial hearing, and violated Plaintiff Civil Rights.

3. The Defendants in this Action are all Tax Exempt Under 501 (c) 3, of Internal Revenue Code. The Courts have held for the purpose of determine racial discrimination a Grant of Tax Exemption is State Action, therefore, Defendant Foundations are agency of the Government, and this lawsuit must be prosecuted by the Attorney General

4. To review only part of Judge Curtin's Order and Decision of July 18, 1975, dismissal of the plaintiff's actions, The Clerk is directed to enter judgment in each case in favor of the defendants dismissing plaintiff's complaint with costs.

5. Can a Black Plaintiff, challenging racial discrimination obtain a fair and impartial hearing, justice based on the facts, when the Judicial Branch of Government hearing the case is operating in a discriminatory manner. In that no Blacks are allowed to be part of the Court, and when Blacks file a lawsuit challenging racial discrimination, they know what the District Court decision is going to be, one White people receive immediate decision while Blacks must wait months and often more than a year for the court to dismiss the complaint.

STATEMENT OF THE CASE:

The lawsuit was filed in United States District Court for the Western District of New York, on December 27, 1971, that on January 6, 1972, Petitioner filed a Motion for a change of Venue, to change the lawsuit, out of the Western District Court to another District, Judge Curtin, denied the Motion. That on March 7, 1973, Judge Curtin, dismissed the lawsuit stating where was No State Action, an Appeal was made to United States Court of Appeals for Second Circuit, and on December 4, 1973, The Court of Appeals Reversed in Part, Affirmed

in Part and Remanded. That on April 5, 1974, revised its decision. Motion was made to Amend Complaint, however Judge Curtin, Order Plaintiff, at the demand of Defendants Attorney to get Attorney, at this stage of the lawsuit, I was forced to give full control of my lawsuit to a member of the Bar Association, whom all Counsels for Defendant, was a member of the same organization. That another lawsuit was prepared and mailed to United States District Court, for the District of Columbia, dated March 28, 1975. That on March 29, 1975, Judge Curtin gave permission to File and serve an Amended complaint.

That on May 6, 1974, Judge Curtin, issued stay on the lawsuit filed in District Court of The District of Columbia. July 18, 1975, Judge Curtin, dismissed the complaint.

POINT 1.

That Judge Curtin, errored in Ordering Plaintiff, to obtain Counsel. The right of self-representation has been protected by statute since the beginning of our Nation.

> Section 35 of the Judiciary Act of 1789, 1 Stat. 73,92, enacted by the First Congress and signed by President Washington

This right is further codfied in 28 U.S.C. 1654.

The Court In Adams ex rel. McCann v. United States 317 U. S. 269,279. "It held only that the Constitution does not force a lawyer upon a defendant." The Court in Adams did recognize, albeit in dictum, an affirmative right of self-representation. In Carter v. Illinois 329 U. S. 173,174, 175, where the Court again adverted to the right of self-representation:

The Counsel that I obtain at the instruction of Judge Curtin, and against my wishes, I was not aware that he had worked with Attorney Ogden Brown, who represents Defendant The Harry Dent Family Foundation in this case now.

This Counsel made this lawsuit into a Class Action.

United States Supreme Court held in Faretta v. State of California 43 L. W. 5004 (June 30, 1975)
At Page 5008

> "TO THRUST COUNSEL UPON ---- THE ACCUSED, AGAINST HIS CONSIDERED WISH, THUS VIOLATES THE LOGIC OF THE AMENDMENT. IN SUCH A CASE, COUNSEL IS NOT AN ASSISTANT, BUT A MASTER: AND THE RIGHT TO MAKE A DEFENSE IS STRIPPED OF THE PERSONAL CHARACTER UPON WHICH THE AMENDMENT INSISTS. IT IS TRUE THAT WHEN A DEFENDANT CHOOSES TO HAVE A LAWYER

MANAGE AND PRESENT HIS CASE, LAW AND TRADITION MAY ALLOCATE TO THE PRESENT ~~DEFENDANT~~ COUNSEL THE POWER TO MAKE BINDING DECISIONS OF TRIAL STRATEGY IN MANY AREAS. HENRY v. MISSISSIPPI, 379 U.S. 443, 451; Brockhart v. Janis 384 U.S. 1,7-8; Fay v. Noia 372 U.S. 391, 439. This allocation can only be justified, however, by the defendant's consent at the outset, to accept counsel as his representative. An unwanted counsel 'represents' the defendnts only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defendan guaranteed him by the Constitution, for, in a very real sense, it is not his defense."

United States Supreme Court held in the case Faretta v. State of California 43 L. W. at 5010,

"In the American colonies the insistence upon a right of self-representation was, if anything, more fervent than in England.
The colonists brought with them an appreication of of the virtues of self-reliance and a traditional distruct of lawyers. When the Colonies were first settled, 'the lawyer was synonomous with the cringing Attorneys-General and Solicitors-General of the Crown and the arbitrary Justices of the King's Court, all bent on the conviction of those who opposed the King's prerogatives, and twisting the law to secure convictions. This prejudice gained strangth in the colonies where ' distruct of lawyers became an institution.' Several Colonies prohibited pleading for hire in the 17th century. The prejudice persisted into the 18th century as 'the lower classes came to indentify lawyers with the upper class.' The year of Revolution and Confederation saw an up surge of anti-lawyer sentiment an- 'sudden revival after the War of the Revolution of the old dislike and distruct of lawyers as a class! In the heat of these sentiments the Constitution was forged.

*** *** ***

At the same time however, the basic right of self-representation was never questioned. We have found no instance where a colonial court required a defendant in a criminal case to accept as his representative an unwanted lawyer. Indeed, even where counsel was permitted, the general practice continued to be self-representation.
The right of self-representation was guaranteed in many colonial charters and declarations of rights. These early documents establish that the 'right to counsel meant to the colonists a right to choose between pleading through a lawyer and representing oneself. After the Declaration of Independence, the

right of self-representation, along with other rights basic to the making of a defense entered the new state constitution in wholesale fashion. The right to counsel was clearly thought to supplement the primary right of the accused to defend himself, utiliging his personal rights to notice, confrontation and compulsory process."

X That on page 3 of Judge Curtins Decision of July 18, 1975, Judge Curtin stated:

"BECAUSE OF THE COMPLEXITY OF THE ISSUES INVOLVED IN THIS CASE, AT A NUMBER OF MEETINGS WITH THE PLAINTIFF I STRONGLY SUGGESTED TO HIM THAT IT WAS TO HIS BEST INTREST TO LISTEN CAREFULLY TO THE ADVICE OF HIS ATTORNEY AND TO FOLLOW HIS SUGGESTIONS."

POINT 2:

THAT THE DISTRICT COURT APPOINTS A TRUSTEE OR DIRECTOR TO DEFENDANT "THE BUFFALO FOUNDATION", FOR THE PAST 52 YEARS.

That Defendant The Buffalo Foundation, admitted in an affidavit in support of a motion for summary judgment that its by laws provides that of its seven-member Governing Committee one member is to be appointed by the Mayor o Buffalo, one by the Surrogate of Erie County, one by the United States District Court, Judge of the Western District of New York, and one by the Senior Justice of the Supreme Court.

That United States Court of Appeals 2nd Circuit, ruled in the Case Jackson v. The Statler Foundation 496 F. 2d at 624 (9)

"A FINDING OF 'STATE ACTION' BY CHARITABLE FOUNDATION WHICH HAD ON ITS GOVERNING COMMITTEE A MAYOR, A COUNTY SURROGATE A FEDERAL DISTRICT JUDGE AND A STATE JUDGE MIGHT BE WARRANTED IN ACTION CHALLENGING FOUNDATION'S TAX EXEMPT STATUS BECAUSE OF ALLEGED RACIAL DISCRIMINATION AGAINST PLAINTIF EVEN IF THE COURT SHOULD FIND ONLY SOME OTHER SIGNIFICANT EVIDENCE OF 'STATE ACTION'"

It is impossible for Plaintiff to obtain a fair and impartial hearing in the District Court, where the Judge is a defendant in the Defendant The Buffalo Foundation, and the Buffalo Foundation is part of the this lawsuit that Judge Curtin, will appoint a member to the Governing Committee of the Buffalo Foundation.

I had realized it was impossible to obtain a fair hearing of this lawsuit in this Court, that is the reason, I made a Motion asking for a Change of Venue out of District Court for Western New York, that was the reason that I filed the new lawsuit in The District Court for the District of the District of Columbia, and that was the reason that I filed a Motion, asking that

Judge Curtin Remove himself from the lawsuit, which Judge Curtin dismissed.

PARRISH v. Board of Commissioner of the Alabama State Bar (CA-5) 12/12/74 43 L. W. 2248,

"RECUSE PROCEDURE PROVIDED BY SECTION 144 OF JUDICIAL CODE REQUIRES FEDERAL DISTRICT COURT JUDGE TO RECUSE HIMSELF WHENEVER AFFIDAVIT FILED BY PARTY TO PROCEEDING SETS FORTH FACTS THAT REASONABLY SUPPORT PARTY'S BELIEF THAT JUDGE HAS PERSONAL BIAS OR PREJUDICE AGAINST HIM"

ETHICS- ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES OPINION No. 40. 1/10/75. 43 L. W. 2340,

"FEDERAL JUDGES SHOULD RESIGN MEMBERSHIP IN SUCH ORGANIZATIONS AS ANTI-DEFAMATION LEAGUE OF B'NARI B'RITH, SIERRA CLUB, AND NATIONAL ASSOCIATION FOR ADVANCEMENT OF COLORED PEOPLE IF SUCH ORGANIZATION ARE LIKELY TO BE ENGAGED IN PROCEEDINGS THAT WILL ORDINARILY COME BEFORE THEM OR WILL BE REGULARLY ENGAGED IN ADVERSARY PROCEEDINGS IN ANY COURT."
"....A JUDGE SHOULD NOT SERVE IF IT IS LIKELY THAT THE ORGANIZATION WILL BE ENGAGED IN PROCEEDINGS THAT WOULD ORDINARILY COME BEFORE HIM OR WILL BE REGULARLY ENGAGED IN ADVERSARY PROCEEDINGS IN ANY COURT."
~~U.S.C. 455,~~

28 U. S. C. 455,

"ANY JUSTICE OR JUDGE OF THE UNITED STATES SHALL DISQUALIFY HIMSELF IN ANY CASE IN WHICH HE HAS A CONCERNED IN INTREST IN ANY SUIT, HAS BEEN COUNSEL IS OR HAS BEEN A MATERIAL WITNESS, OR IS SO RELATED TO OR CONNECTED WITH ANY PARTY OR HIS ATTORNEY AS TO RENDER IT IMPROPER, IN HIS OPINION, FOR HIM TO SIT ON THE TRIAL APPEAL, OR OTHER PROCEEDING THEREIN."

Still Judge Curtin, the Presiding Judge in this case has another concerned intrest in this lawsuit.

That Attorney William B. Mahoney and Attorney Peter Crotty, both are Trustees of Defendant "THE STATLER FOUNDATION", and are also Attorneys for "The Statler Foundation". Attorney Peter Crotty, was Chairman of the Democratic Party, he resigned to become a Federal Judge, something surviced regarding his background, which disqualified him, he then steped aside and he and Attorney Mahoney, recommended, Judge Curtin, to the bench, these three Attorney Mahoney, Attorney Crotty, and Judge Curtin, are real good friends, they visit each others homes. Considering all of these facts Judge Curtin bias against me for attacking one of his invested intrest, which makes it, impossible for Petitioner to obtain a fair and impartial hearing in the District Court.

POINT 3.

88. *** *** ***

DEFENDANT FOUNDATIONS ARE AGENCY OF THE GOVERNMENT, AND THIS LAWSUIT MUST BE PROSECUTED BY THE UNITED STATES ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, AND THE NEW YORK STATE ATTORNEY GENERAL.

Failure in the Attorney General representing these agencies, renderes all papers filed by their un-authorized private attorneys as being null and void, and the Defendants are in Default, and judgment shou be entered against each of them.

28 U.S.C. 516:

"EXCEPT AS OTHERWISE AUTHORIZED BY LAW, THE CONDUCT OF LITIGATION IN WHICH THE UNITED STATES, AN AGENCY, OR OFFICER THEREOF IS A PARTY, OR IS INTRESTED, AND SECURING EVIDENCE THEREFOR, IS RESERVED TO OFFICERS OF THE DEPARTMENT OF JUSTICE, UNDER THE DIRECTION OF THE ATTORNEY GENERAL."

Only Attorney-General or United States Attorney can represent government in an action and only Attorney-General has authority to mae a contract for special employment of an attorney and no attorney can receive counsel fees from government except on receipt of certificate of Attorney-General that such services were actually rendered. Richter v. U.S.D.C. Pa. 1960. 190 F. Supp 159, affirmed 296 F. 2d 909, Certiorari denied 82 S. Ct. 845, 369 U.S. 828

Where an agent or agency of the federal government is not given authority to prosecute suits independently, they must be brought by the Attorney General or by his authority. Walling v. Crane. D. C. Ga 1945 64 F. Supp 88 reversed 158 F 2d 80, reversed 174 F 2d.646.

28 U. S. C. 519, Supervision of Litigation:

> Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United Staes, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

That New York State, Estate Power and Trust Law, requires the Attorney General of the State of New York, to represent Trust and Tax Exempt Organizations, to protect the invested intrest of the State.

That these Trust or Foundations must be represented by the New York State Attorney General, and United States Attorney General. That both New York State Attorney General, and United States Attorney, appear in this case, but neither appear for the 13 defendant Trust or Foundations.

That these private Attorneys appearing for these 13 Trust or Foundations, have not been authorized, by State of New York,

or by 28 U.S. C. 516, 28, U.S.C. 519. All Answers and Motions, briefs, filed by these Privates Attorneys are illegal, for the private attorneys have not been authorized by the Department of Justice to represent a Government Agencies.

That these private 13 Trust or Foundations their private attorney, have no legal right to appear for these agencies, no do these private Charities have the legal right to use funds for charitable purposes to pay attorneys fee, so they Can violate State and Federal Laws, "To practice Racial Discrimination and to enter into a conspiracy to deprive petitioner Duo PRocess of the Law and Equal Protection of the Law.

In the case United States of America v. Manning 215 F. Supp 272 (25) 1963:

> "A SUIT UNDER THE CIVIL RIGHTS ACT OF 1960 IS A CONTROVERSY BETWEEN THE UNITED STATES AND THE NAMED DEFENDANTS AND NOT BEWWEEN INDIVIDUALS WHO HAVE BEEN DENIED THEIR VOTING RIGHTS AND THE DEFENDANTS. 42 USC 1971(e).

The Court held in McGlotten v. Connally 333 F. Supp 448 (D.D.C. 1972) (three-judge-court), "The secretary of United States treasury was enjoined from granting Tax Exemptipn to racially discriminatory fraternal organizatons,. and from permitting donors to those organizations to deduct their contributions. One of the three independent grounds for the injunction relief granted was that such tax incentives violates the constitut--- equal protection clause, because they contitue significant government subsidies, supporting and encourging racial discrimination."

In Jackson v. The Statler Foundation 496 2d 635, footnote (5
"Since appellant challenges the action of both New York State and the Federal Government, it might be more accurate to refer to the challenged activity as 'GOVERNMENT ACTION', rather than State Action."

The question whether tax incentives are capable of activating equal protection clause was first resolved in Pitts v. Department of Revenue 333 F. Supp 662 (1971). In the case Griffin v. School Board 377 U.S. 218 (1964), the United States Supreme Court reversed a district court's injunction restraining county officials from enforcing two ordinances which gave government add to private racially segregated schools.

Falkenstein v. Department of Revenue 350 F. Supp 887 (D. Ore 1972) Three-Judge-Court, Appeal dismissed 409 U. S. 1099 (1973), CONCLUDED THAT Oregon, by granting a charitable exemption, "Placed Its Stamp of approval on the Elks Lodge as An Organization that furthers the Legislative Policy of the State

Grossner v. Trustees of Columbia University 287 F. Supp 535,547-48 (S.D.N.Y. 1968), The Court wrote "That receipt of money from the State is not without a good deal more enough to make the recipient an AGENCY OR INSTRUMENTALITY OF THE GOVERNMENT."

In United States v. Barr 295 F. Supp 889 (S.D.N.Y. 1969)
"Private persons who acted as Process servers pursuant to a New York statute where held to be with in the ambit of the fourteenth Amendment."
United States v. B. Jewelers, Inc 318 F. supp 1293,1299 (S.D.N.Y. 1970). "The court reasoned that non-officials process servers perform a function of the sheriff, and public officer, when service summons and complaint under the statutory authorization."

Jackson v. The Statler Foundation 496 F. 2d 635 (1974), the court went in great length to show supervisory of foundations and trust having a Tax Exemption status, by the Federal Government it refers to foundation as "PUBLIC FUNCTIONS".

The cpurt pointed out how the Internal Revenue Code Section 4945 of I.R.C. of 1954, requires Trust and Foundations with Tax Exemption, to submit their questions to Internal Revenue Service for prior approval before being allowed to proceed on in the event their question has not been spelled out in advance

Therefore Trust and Foundations in this lawsuit are bound as agencies of the Federal Government, as well as agencies of the State Government and must be represented in the Courts only by United States Attorney and New York State Attorney General As to DEFENDANT The Statler Foundation, whereby the Surrogate Court of Erie County, appoints all of their Directors, and as to The BUFFALO FOUNDATION, where Mayor, Surrogate U.S. District Court, and Erie County Supreme Court appoints am member to the Governing Body, bring them under the holdings of the Court, "Yet it is well settled that one cannot dispose of property in a racially discriminatory manner and entangle the state in the process. Evans v. Newton, 382 U. S. 296, 301, 86 S. Ct 15 L.E.D 2d 373 (1966), Commonwealth of Pennsylvania v. Brown 392 F. 2d 120 (3rd Cir.) cert. denied 391 U.S. 921, 88 S. Ct 1811 20 L.Ed 2d 657 (1968).

The U. S. Congress provided in the law, whereby Non-Profit Tax Exempt Organizations, should be sponsors of multi-family housing The Congress, provided that U. S. Department of Labor, should enter into contracts with various Tax Exempt Organizations to operate various programs for Department of Labor, non-profit organization, that are exempt under 501 (c) 3, of the Internal Revenue Code, are ranked along with community governments, and therefore are Government agencies, proforming work as a Government agency.

Since all defendants in this lawsuit are as to foundation or Trusts are Tax Exempt under 501 (c) 3 of the Internal Revenue Code, are agencies of the Government and should be represented by Justice Department, since they were not, this Court must declare all papers filed by their illegal private attorneys cannot be considered, and the foundations are in Defalut--Defalut DEFAUIT, Judge Curtins, decision dismiss Plaintiff complaint should be reversed and Summary Judgment be granted to Plaintiff.

POINT 4

> "The Motions of the defendants in each case to dismiss plaintiff's complaint are granted. The Clerk is directed to enter judgment in each case in favor of the defendants dismissing plaintiff's compaaint with costs."

That defendantThat defendant Councel Phillip, Lytle, Hitchock,

Blaine & Huber,er,

representing The Buffalo Foundation, Cummings Foundation and Wurlitzer The Farny R. and Grace Wurlitzer, Inc., Foundation,

filed for Interrogatories. The other 10 defendant foundations did not join in this rquest for Interrogatories. Every question presented by Defendant in their request for Interrogatories, had been submitted in Plaintiff answer, or Defendants already had the information, which they received at the time of taken Depositions on February 14, 1972, February 17, 1972, March 29, 1972, or through affidavits or memorandum submitted by Plaintiff. Infact the answers to each question all defendant counsel had many times over.

Judge Curtin Ordered me to get Counsel to represent me and barred me from representing myself, which I had a constitutional right to do so.

In the Second Circuit opinion in Jackson v. The Statler Foundation 496 F. 2d at 626

"** *** **** ***
FURTHER, THE DISTRICT COURT SHOULD CONSIDER REQUESTING THAT COUNSEL REPRESENT APPELLANT. IN THIS REGARD, WE NOTE THAT IF APPELLANT'S FOUNDATION is incorporated it may only appear
" with counsel.-

That the amended Complaint that Petitioner desired to prepare had no mention in it regarding a claim about or in behalf of the foundation that was in the Appeal that modivated the court to state a foundation can only appear with counsel. Even the Amended Complaint there is no reference to that foundation. The request for Interrogatoreis made by Attorneys Phillips, Lytle, Hitchock, Blaine & Huber, they made demand for information regarding the Donald Jackson Foundation, when this name does not appear in the Amended Complaint, on this basis, Judge Curtin issued order after attempting to prepare a foundation whereas the defendants would have a defense to rest their case upon. That Judge Curtin, order Plaintiff, to turn my lawsuit over to Attorney, and continue to inform me that my Attorney was good, and for Me to obey my Counsel. Counsel prepared a Class Action, I appeared before Judge Curtin, and so informed Judge Curtin, that I wanted to proceed Pro Se, in case 75-185, for 71-592 I could not represent it because it was a Class Action. Under New York State Law its a Crime, to practice law without a license. Having prior experience with lawyers, I did not want to trust this lawsuit with another lawyer, and infact did not have funds to hire a lawyer. Judge Curtin, realizing that he had me in a corner, he would not lift the stay he had impose on 74-185, however let me point out this, that Judge Curtin consid consolidated Civil Action 1971-592 and Civil Action 1974-185, Plaintiff filed Motion for Summary Judgment filed April 18, 1974, listed in the Appeal Index as 104, this also included a Motion to D"ISMISS defendants Motions, plus a Reply Affidavit filed on May 1, 1974, listed in the Appeal Index as 110.

That each answer or Motion filed by Defendants were the same as filed previously, that was answered by Plaintiff. Each of the Defendants raised the same question that the Court of Appeals ruled upon in the original case found Jackson v. The Statler Foundation #/ 496 F. 2d 623 (1974).

Each of the 13 Defendant Foundations continual to raise the same point, that they were Private Foundations, receiving their fands from private sources.

The Appeal Index list The Statlerss Foundation Motion for Summary Judgment Appeal Index 80, July 29, 1974.

On page 1 and 2 of the Affidavit Counsel for the Statler Foundation list some of parts of the Last Will.

The affidavit fails to mention that the Will states that the Trustees may if they desire obtain a Tax Exemption Status. The Trustees did obtain a TAX Exemption Status, which then places the foundation in a different situation, that it must obey Federal laws.

The Indenture provides for President, The First, and Second Vice President, Teh the Secretary and the Treasure. A total of 5 Trustees, however the present trustees will only allow 3 Trustees.

The Indenture requires that the same officers of the Trust-Hotel Statler Co., Inc. would be the same officers of the Trust or foundation. There is no more Hotel Statler Co., Inc. and the 1969 Tax Reform Act, list officers of a Corporation that makes large donations to a Tax Exempt Foundation, as illegal Trustees or Directors.
The authority to administor the Trust, rest with the Erie County Supreme Court, and not the Surrogate Court. All of the present Trustess are illegal appointed. See: Hines v. D'artois 42 L. W. 2056 (7/1/74). Last Will & Testament of Frank Idem 256 App. Div. 124 (1939),

"IF TRUSTEE OF A TRUST IS NOT NAMED IN TRUST INSTRUMENT THE TRUST VESTS IN THE SUPREME COURT TO ADMINISTER."

See Kingsburg v. Brandegee 100 N.Y.S 353 (1906)

"THERE THE TRUSEEE IS NOT INDICATE WITH SUFFICIENT CERTAINTLY OR CORRECTNESS THE SUPREME COURT HAS POWER TO NAME A TRUSTEE."

See Application of Botjer 202 N.Y.S 2d 323 (1960)

"WHERE FOUNDATION WAS I CORPORATED FOR CHARITABLE PURPOSES, SUPREME COURT HAD JURISDICTION, UNDER EQUITABLE POWERS, TO FILL VACANCIES, BREAK STAIEMATES AND INJECT ITSELF WHERE THERE WAS THREAT TO PREVENT THE ACCOMPLISHMENT OF OBJECTIVE OF CHARITABLE."

That the Statler Foundation from 1934 to 1971, is 37 years, in this period this foundation has given for charitable purposes $521,242 to over $600,000 per year to 23 to 40 Grants. In this 37 year periodn according to an affidavit filed in U. S. District Court for the Western New York in this action, Made by Peter J. Crotty, who states he is the Chairman of the Trustees of the Statler foundation, he list 9 names of person who were Black were granted scholarships in this 37 year period, this is not one grant per year to a Black, this is admitted Racial Discrimation by off Officer of this Tax Exempt foundation. See Educational Equality League v. Tate 472 F. 2d 612 (1973).

"Under Fourteenth Amdnemdn Amendment, all persons colored or White stand equal before laws of States, and Amendment contains necessary implications of positive immunity, or right most valuable to colored race of exemption form legal discrimination 42 USC 1983; U.S.C. Const. Amend 14."

42-(6) Affirmations of goos faith in mkaing individual selections are insufficient to dispel prima facie case of systematic exclusion of Negroes. 42 USC 1983.

That each of Trustees of the Statler Foundation, are appointed for life by the Surrogate Court. This is illegal, nothing in Indenture states that a Trustee is to be appointed for life. Under New York State Law, only the State Legislature, has authority to make a Life Time Trustee appointment. Trustees of this Trust received Commissions ranging annually from $26,000 upward. The salary Commission of the Trustees, is based upon a precentage of the income, the foundation derives from their investments. Therefore this Trust could not function, if it did not have Tax Exempt Status.

That at the time Plaintiff, applied to be a Trustee of the Statler Foundation, there existed 3 vacancies. On vacancy was filled by the appointment of Attorney William B. Mahoney the other two vacancies remain unfilled. Presently there are three more vacancies of Trustees of The Statler Foundation. The Trustees, are illegally selected by political consideration. You must be wealthy or high Middle Class, and must be recommended by the Political Party.

LAST WILL AND TESTMENT OF ELLSWORTH M. STATLER,
"THE TRUST HEREBY CREATED SHALL BE DEEMED A CHARITABLE TRUST UNDER THE LAWS OF THE STATE OF NEW YORK AND SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STEE OF NEW YORK.

ELLSWORTH M. STATLER INDENTURE NAMED AS TRUSTEE OF THE TRUST OR FOUNDATION HIS WIFE, THE PRESIDENT, THE FIRST, AND SECOND VICE PRESIDENT, THE SECRETARY AND THE TREASURE ALL WHOM HEID THE SAME POSITIONS OF THE HOTEL STATLER CO., CO, INC. TO BE ALSO HOLDING SAME POSITION OF THE TRUST FUND OR FOUNDATION."

When the Statler Foundation Trust, was created, it had no Tax Exemption. Therefore it only had to obey State Laws, thereafter the Trustees of the Statler Trust, secured a Tax Exemption Status, therefore the Trust must now also obey Federal rules and regulations.

a

CAMERON BAIRD FOUNDATION:

Appeal Index 33.
JANE D. BAIRD, swore to an affidavit dated February 21, 1972, Stating that she was a Trustee, and further all of the Trustees were children of my late husband Cameron Baird, in whose name and memory the foundation was created and me. I am aware that Plaintiff did send several communications to the foundation, in the name of his private foundation but I have no recollection of the specific content of any of such communications."
Family Trustees of a Tax Exempt Trust is prohibited by section 3078.03 (5) C (a) or (b) (Family) of the Internal Revenue Code, includes brother, sister, and lineal decendants.
See: Slate v McPetridge 42 L. W. 2156 (8/30/73),

"Failure of administrative officials to respond to request for use of public park for political rally until 16 days had passed and person requesting use had made second request violated due process, By allowing the officials well, over two weeks to sit on his hands, we hold that Chicago Park District are liable as matter of law in damages for thee dhe delay."

See: Western Kentucky Welfare Rights Organization v. Shults 42 L. W. 2361 (12/20/73)

See Huey v. Barloga 277 F. Supp 864 (25)

These foundations many do not have seperate offices, the Corporation that or the family that establishes the foundation controls the foundation from their home or corporate office. The assign a person in their home or office, speaks for the foundation. These spoakesmen are named under to Internal Revenue Code as "FOUNDATION MANAGERS", they many not be directors but they have authority to make decision, that was given to them under the I. R. C. and the officers that hired them. Mr. Frey, would be classified as a Manager.

M

THE BAIRD FOUNDATION: On page two of their affidavit, they list Black oriented groups they claim St. Augustine Center this is a White Appeal Index # 69:

Tax Exempt Organization , , all of the officers are White.

Each of the other organizations are White and White officers, After this lawsuit was filed, and after the period of time that this lawsuit does not cover, United Fund, commence to makes some donations to about 4 Black organizations out of a total more than 100 organizations. The Baird, foundation claims they have had no vacancies on their Board of Trustees. This is untrue. EACH year all of their officers are up for re-election. Even if a Trustee serve without remmneration, it does not be-

mean that the Trustees must be kw White.

That the Baird Foundation, furthers discriminate against

Blacks, in that their assets are invested only in White owned

and directed businesses. Never in the foundations history

have they invested in a Black business.

That the Baird Foundation, is another one of the foundations that operates from their corporate office of the family that donated the money to the foundation, with members of the family as Trustees.

This foundation could not operate without a Tax Exemption, because without a tax exemption their Annual tax would be on their total income and the large donation from the estate would have been heavily taxed.
This foundation discriminated against Plaintiff, during the fully period of this lawsuit, plus their investments are limited only to White corporations and to White individuals if loans or grants are made. In their affidavit made by WILLIAM C. Baird, he states on page 3 , "WITH RESPECT TO INVESTMENTS, IT HAS BEEN THE POLICY OF THE TRUSTEES OF THE BAIRD FOUNDATION TO INVEST IN THOSE BUSINESSES WHICH WILLF PRODUCE FOR THE BAIRD FOUNDATION,THE MOST REGULAR AND HIGHEST INCOME POSSIBLE AND WHICH WILL PRESERVE THE TRUST ESTATE. I HAVE HERETOFORE BEEN ADVISED BY COUNSEL THAT IT IS THE DUTY OF A TRUSTEE TO MAKE INVESTMENTS SUCH 'AS A PRUDENT MAN WOULD MAKE OF HIS OWN PROPERTY HAVING PRIMARILY IN VIEW THE PRESERVATION OF THE TRUST ESTATE AND THE AMOUNT AND REGULARITY OF THE INCOME TO BE DERIVED'. I, TOGETHER WITH THE OTHER TRUSTEES have attempted to adhere to that policy. our investments have been made without regard to the racial orientation of the business in which the investments were being made.-

One should not be scholed-for punished for trying to earn money, however one should be punished, if his greed as in this cases amount to disregard to State and Federals laws prohibiting racial discrimination, and defendant ignores the law and continual their campaign of racial discrimination, when use the excuse that a prudent man will strive to preservation of the trust. Regardless of what laws are violated the trust must be preservation above any and all consideration.

ad

THE BUFFALO FOUNDATION;

This Defendant submitted an affidavit stating that the Mayor, Surrogate, U. S. District Court, and Erie County Supreme Court appoints one member to the foundation Governing Body, while the other members are appointed by the Governing Committee, this would bring this foundation within the holding of Pennsylvania v. Board of Trust 353 U. S. 230 (1957), therefore its State Action, and the other members must be elected as required by the 15th Amendment to United States Constitution, which has not been done. The full period this lawsuits covers, this foundation has not had a Black Trustee, Director or an officer, there has been vacancies, This foundation has not invested any of their assets in Black businesses, and discriminated against Petitioner in grants employment.

That Attorney, for this foundation, filed Interrogatories, requesting information, which had already been submitted by affidavit, memorandum , or depositions that were taken over three day periods, or the information was submitted to the Attorney.
The court held in Macrina v. Smith D. C. Pa. 1955, 18 F.R.D. 254.

"WHERE DEFENDANT HAD ONCE ANSWERED QUESTION, HE COULD NOT BE REQUIRED TO ANSWER AGAIN ON TAKING OF DEPOSITIONS UNDER THE CIRCUMSTANCES PRESENT IN THIS CASE."

The court held in HAMPTON v. PENNSYLVANIA R. CO., D. C. Pa. 1962, 30 F.R. D. 70.

" A MOTION UNDER THIS RULE TO DIRECT WITNESSES NAMED TO ANSWER SPECIFIC QUESTIONS AND TO ANSWER GENERAL QUESTIONS ON DEPOSITIONS WOULD BE DENIED WHERE ALL OF INFORMATION RELEVANT TO ISSUES RAISED IN CASE NECESSARY TO PROPER PREPARATION HAD BEEN MADE AVAILABLE TO COUNSEL FOR PLAINTIFF, THE ISSUE BEING WHETHER DEFENDANT, IN LIGHT OF FORMER DEPOSITIONS, INTERROGATORIES AND ADMISSIONS, SHOULD BE COMPELLED TO AGAIN PRODUCE WITNESSES FOR GENERAL DEPOSITIONS OR COMPELLING ANSWERS TO SPECIFIC QUESTIONS."

That the Court held in SUNDAY v. GAS SERVICE CO. D. C. MO. 1950, 10 F.R.D. 185.

"WHERE PLAINTIF'S INTERROGATORY REQUESTED DEFENDANT TO STATE LOCATION OF GAS METER IN PREMISES AND MANNER IN WHICH IT WAS CONNECTED AND INSTALLED, AND PLAINTIFF, AS AN OCCUPANT OF THE PREMISES, WAS ENTIRELY FAMILIAR WITH THE LOCATION OF THE GAS METER, DEFENDANT WOULD NOT BE COMPELLED TO ANSWER SUCH INTERROGATORY."

Additional to other facts set forth, Attorneys for the Buffalo Foundation, handles the foundation affairs annually and knows who they make grants to, the officers, and know of the racial discriminatory scheme by defandant against ~~paintiff~~ plaintiff.

WILLIAM J. CONNERS FOUNDATION:

JAMES H. CUMMINGS FOUNDATION, HARRY DENT FAMILY FOUNDATION, FERGUSON-FOUNDATION, INC., JOSEPHINE GOODYEAR FOUNDATION, JULIA R. AND ESTELLE L. FOUNDATION, INC, THE MARGARET L. WENDT FOUNDATION, THE FARNY R, AND GRACE K. WURLITZER, INC, FRED L. EMERSON FOUNDATION, INC. THE STATLER FOUNDATION, CAMERION, BAIRD FOUNDATION, THE BAIRD FOUNDATION, THE BUFFALO FOUNDATION.

That each of the defendants, maintain a Tax Exemption Status under 501 (c) (3), of the Internal Revenue Code.
That none of these foundations or Trust, could function without a Tax Exemption. That each of the officers of these defendant foundations conspire individually and with the donors of large donations, to make certain only wealthy, or professional Middle class, are selected as officers of these Tax Exempt Foundations.
That each of these defendants,conspired from the trust or foundation to discriminate against poor people and Black people, in employment,

g Tax grants, and their investments. That each of the defendants, dur during the period of time this lawsuit covers, only gave donations to an organization, that had white officers, that may have some Black members. That a Tax Exempt organization, with Black officers was rejected, ignored, and the foundation remained silent, and would not respond, as many of the defendants submitted affidavits stating they received letters, but never answer the letter..
See Slate v. McFetridge 42 L. W. 2156 (8/30/73)

> "Failure of administrative officials to respond to request for use of public partk for political rally until 16 days had passed and person requesting use had made second request violated due process, ' by allowing the officials well, over two weeks to sit on his hands, we hold that Chicago Park District officials are liable as matter of law in damages for the delay."

That most of defendants give hospitals large grants. See Western Kentucky Welfare Rights Organization v. Shults 42 L. W. 2361 (12/30/73),

"INTERNAL REVENUE & SERVICE REV. RUL- 69-545, ALLOWING PRIVATE NONPROFIT HOSPITAL TO QUALIFY AS CHARITABLE INSTIUTIONS BEFORE REQUIRING THEM TO PROVIDE SERVICE FREE OR AT REDUCE RATES TO INDIGENTS, REPRESENTS SWEEPING POLICY CHANGE THAT IS INCONSISTENT WITH CONGRESSIONAL INTENT AND IS THEREFORE, INVALID."

NOTE: The above case United States Supreme Court has agreed to review.

Should United States Supreme Court, uphold this decision, it would

mean each of these Trust or Foundations have been making illegal donations or grants to hospitals. The I.R.C, has established a stiff penality for making illegal grants.
Justice Douglas wrote, in Lubin v. Leonard Panish 42 L. W. 4435, March 1974.
"While I join the Court's opinion I wish to add a few words, since in my view this case is clearly controlled by prior decisions applying the Equal protection Clause to Wealth discrimination, Since classifications based on wealth are 'traditiionally' disfavored, "

Harper v. Virginia Bd of Elections 383 U. S. 663,668 (1966),
The State's inability to show a compelling intrest in conditioning the right to run for office on payment of fees cannot stand Bulloch v. Carter 450 405 U. S. 134 (1972).
The Court first begain looking closely at discrimination against the poor in the criminal area, in Griffin v. Illinois 351 U. S. 12 (1955), We found that de facto denial of appeal rights by an Illinois status requiring purchase of a transcript denied equal protection to indigent defendants since there 'can be no equal justice where the kind of trial a man gets depends upon the amount of money he has" at 19.

In Douglas v. California 372 U.S. 353 (1963, We found that the State had drawn an unconsitutiional line... between rig rich and poor, when it allowed an appellant court to decide an indigent's case on the ~~maeri~~ merits although no counsel had been appointed to argue his case before the appellate court. Just recently we found that the state could not extend the prison term of an indigent for his failure to pay an assed fine, since the length of confinement could not under the Equal Protection Clause be made to turn on one's ability to pay.

Williams v. Illinois 399 U. S. 235 (1970), Tate v. Short 401 U. S. 395 (1971). But criminal procedure had not defined the boundaries within which wealth discrimination have been struck down.
In Boddie v. Connecticut 401 U.S. 371 (1971) the majority found that the filing fee which denied the poor access to the courts for divorce was a denial of Due Process; Mr. Justice Brennan and I in concurrence preferred to rest the result on equal protection, And it was Equal Protection Clause the majority relied on in Lindsey v. Normet 405 U.S. 56,79 (1972), in finding that Oregon's double bond requirement for appealing forcible entry and detainer actions discriminated against the poor "for them as a practical matter, appeal is foreclosed, no matter how meritorious their case may be."
Indeed, the Court has scrutinized wealth discrimination in a wide variety of areas. In Shapiro v. Thompson , 394 U. S. 618 (1969), we found that deterring indigents fromnigrating into the State was not a constitutionally permissible state objective. Closer to the case before us ~~have~~ here was Turner v. Fouche 396 U. S. 346,364 (1970), in which the Court found that Georgia could not constitutionally require ownership of land as a qualification for membership on the Board of Education,
What we do today thus involves no new principle, nor any novel application, " A man's property status, without more, cannot be used by a State to test qualify, or limit his rights as a citizen of the United States, Edward v. California 314 U.S. 160, 184, 1941) Harper v. Virginia Bd of Election supra at 677, Reynolds v. Sims 377 U. S. 533, 561, 562, But the right to vote would be empty if the State could arbitrarily deny the rightto vote and for election California does not satify the Equal protection Clause when it allowws the poor to vote but effectively prevents them from voting for one of their own economic class.Such an election would be a sham and we have held that the State must show a compelling intrest before they can keep political minorities off the ballot

William v. Rhodes 393 U. S. 23,31 (1968). The poor may be treated no differently.

Green v. McElory 360 U. S. at 492 "The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes withinn the Liberty and Property concepts of the Fifth Amendment."

See; Huey v. Barloga 277 F. Supp 864 (1967)

(7) Neglect by State officials of their duty to take reasonable measures to protect oppressed from intimidation and violence used against them as part of a system of discrimination is, where officials have knowledge of use of force by one class of persons against another, tantamount to discrimination by State officials themselves and their neglect thus is State Action, and is within ambit of Civil Rights Act 42 USC 1985 (3) U.S.C.A Const. Amend 14.

(25) The Civil Rights Act is directed at the maladministration, neglect and disregard of laws by state and local officials, and has purpose of providing a federal remedy for deprivation of federally guaranteed rights 42 U.S.C.A. 1983, 1985.

See Educational Equality League v. Tate 472 F. 2d 612

(6) Affirmations of good faith in making individual selections are insufficien t to dispel prima facie case of systematic exclusion of Negroes 42 U.S.C.A. 1983.

See. Jackson v. Statler Foundation 496 F. 2d 623, (CA-2) 4/5/74.

Tax-exemption of private charitable foundation charged with discriminatory denial of grant may confer 'STATE ACTION' status sufficient to invoke Equal Protection Clause of 14th Amend, and Due Process Clause of Fifth.

See Green v. Kennedy 309 F. Supp 1127 (1970)

(12) "Fifth Amendment due process clause did not permit federal government to act in aid of private racial discrimination in way which would be prohibited to States by Fourteenth Amendment, whether or not it was purpose of federal statutes or regulations to foster segegated schools Civil Rights Act of 1964, 601, 42 U.S.C. 2000d U.S.C.A Const. Amend 5, 14."

See Gonzales v. Fairfax Brewster, Inc 42 L. W. 2077, (2/27/73)
"Private schools policy of refusing to admit blacks solely because of their race violates civil rights act of 1866, 42 U. S. C. 1981, since it denies blacks same right to make and enforce contracts *** as is enjoyed by white citizens."

See Bittker and Kaufman, Taxes and Civil Rights Constitutionalizing, The Internal Revenue Code , 82 Yale L. J. 51, (1972).

King v. Laborer 443 F. 2d 273, (1971).

McGlotten v. Connally 338 F. Supp 448 (1972) (4)

> " A black American has standing to challenge a system of support and encourgement of segregated fraternal organizations."
>
> (11). The Internal Revenue Code does not allow deductions of contributions to organizations which exclude nonwhites from membership 26 U.S.C. (I.R.C 1954) #170 (c) (4) 501 (c) (8) 642 (c) 2055 , 2106 (a) 2533; U.S.C.A Const Amend 1,14."

See Jennings v. Davis 476 F. 2d 1271 (1973), Generally, liability for negligence arises only from affirmative action but where on has an affirmative duty to act and he fails to act accordingly he may be held liable for his nonfeasance if his omission is unreasonable under circumstances.

See Jones v. Mayer C. 392 U. S. 409 (1968)
Harper v. Kleindienst 362 F. Supp 742
Burton v. Wilmington 365 U. S. 715 (1961)

[redacted]

[redacted]

POINT 5:

That its impossible for Plaintiff a Black man, to obtain an fair and impartial hearing in the District Court, before Judge Curtin, No Blacks are employed in the Court, decisions in Black cases are held long periods of time, and its dismissed if the lawsuit is challenging racial discrimination. Many Blacks, do not file lawsuits, in the Federal court, for they feel as Plaintiff does the Court supports racial discrimination, this encourges White people to practice racial discrimination, for they feel the District Court will support their racists views.

CONSLUSION:

Plaintiff has shown that Judge Curtin, errored, in ordering Plaintiff, to secure an Attorney, which violated Plaintiff Civil Rights, and any thing the lawyer failed to do, plaintiff cannot be punished by dismissing his lawsuit. See Final Report of the Advisory Committee To The Judicial Council on Qualifications to

Practice Before The United States Courts in the Second Circuit on

Proposed Rules for Admission To Practice Starting with pages 2 and
4
4.

"CHIEF JUDGE KAUFMAN delivered a similar indictment when he said: 'Too many lawyers come into our courts today with only a diploma to justify their claims to be advocates. They are untrained and unadvised in the immensely practical work of litigation."
Chief Judge Bazelon of the District of Columbia Circuit has referred to these lawyers as 'walking violations of the Sixth Amendment' and said of the neophyte:
"I, for one, would not like to be the defendant whose trial is the vehicle for some young lawyers to gain trial practice."

See Page 7 See Page 11,

"THE COMMITTEE IS OF THE OPINION THAT ALL OF THE EVIDENCE DEMONSTRATES THAT INCOMPETENCE EXISTS, ATTRIBUTABLE TO LACK OF PROPER TRAINING, AND THAT THE PUBLIC IS DECEIVED WHEN THE COURT ADMITS UNQUALIFIED ATTORNEYS TO PRACTICE."

That the District Court Appoints a Trustee or Director to the Buffalo Foundation, which is a defendant in this case, while at the same time Judge Curtin, refuse to disqualify himself, and he is

actual a Defendant in the lawsuit, for the Court is part of the Buffalo Foundation, this is illegal. Whould this be allowed then every racist organization in the Nation, would appoint

the District Court, as a Trustee or Director of their foundation,

and they would be above the al- law, for the District Court, will

not rule against an organisation, it is part of. This arrangement

violates Plaintiffs Civil Rights

~~POINT-522~~

Plaintiff has pointed out State Action in the Buffalo Foundation, as well as STATE ACTION, with all other 12 defendants. That all of the defendants could not operate efficiently if they did not have the Tax Exemption status.

That Judge Curtin errored in dismissing Plaintiff Complaint, because the foundations are agencies of the State as well as the Government, and must be represented by United States Justice Department, only the Buffalo Foundation made motion for additional answers, whihh information they already had, plaintiff, does not have to re-furnish information furnished previously. Judge Curtin should have granted Default Judgement in favor of Plaintiff, or a Judgment on the Pleadings, or a Summary Judgement in Plaintiff favor.

That its impossible to secure a fair hearing in the District Court, when the District Court, appoints an Officer to The Buffalo foundation, and has done it for over 52 years, and never in the 52 year period, has the Court appointed a Black person to the Buffalo Foundation.

[redacted]facts set forth in this Brief, Plaintiff, hereby prays that Judge Curtins decision be reverse, and Judgment entered in favor of Plaintiff.

Dated:
Nov. 20, 1975

Respectfully submitted,

Rev. Donald L. Jackson

Rev. Donald L. Jackson

A P P E N D I X

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON

Plaintiff

-vs- Civil 1971-592

THE STATLER FOUNDATION, et al.,

Defendants

REV. DONALD L. JACKSON,

Plaintiff

-vs- Civil 1974-185

THE STATLER FOUNDATION, et al.,

Defendants

On December 4, 1973 the United States Court of Appeals for the Second Circuit reversed and remanded my decision to dismiss in Civil 1971-592. On April 5, 1974 the Court of Appeals filed a revised decision explaining the reversal in greater detail. Jackson v. The Statler Foundation, 496 F. 2d 623 (2d Cir. 1974). Judge Smith, in his decision, explained the plaintiff's suit in the following manner:

> Appellant Reverend Jackson brought suit against thirteen charitable foundations located in the Buffalo, New York area alleging racial discrimination against himself, his children and his foundation in that the appellee foundation refused to hire him as a director of their foundation, refused to give scholarships to his children and refused to grant money to his foundation, all for reasons of race. Appellant also challnged an alleged pattern of discriminatory employment and nvestment by the foundations. Reverend Jackson sought injunctive nd declaratory relief, damages, the revocation of appellees' ax exempt status under the Internal Revenue Code, and order directing the foundations to surrender all their assets to the United States Treasury.
> 496 F. 2d at 625.

A reconsideration onebanc was denied by the court.

When the case was returned to me, I granted an order permitting the filing of an amended complaint and the adding of new defendants. Instead, the plaintiff filed an action in the United States District Court, for the District of Columbia, which case was similar in almost every respect to the one pending here in Civil 1971-592. On April 4, 1974 District Court Judge William B. Jones transferred that action to this court. On May

6, 1974, after hearing argument of counsel, I filed an order in these cases staying further proceedings in Civil 1974-185, and giving permission to plaintiff to amend the complaint and apply for additional time in which to file, if he desired. The plaintiff retained counsel in Civil 1971-592, but insisted that he proceed pro se in Civil 1974-185. Because of the complexity of the issues in this case, at a number of meetings with the plaintiff I strongly suggested to him that it was to his best intrest to listen carefully to the advice of his attorney and to follow his suggestions.

In his amended complaint, plaintiff added the Secretary of the Treasury, the Commissioner of Internal Revenue and the District Director at Buffalo, New York. The defense filed interrogatories but, when they received the plaintiff's answers to them during the summer of 1974, a motion was made by the private defendants seeking dismissal of the complaint and other relief because the answers filed by the plaintiff were evasive, incomplete and failed to comply with the rules. At this state plaintiff fired his attorney and insisted upon proceeding

Pro se in Civil 1971-592. On the adjourned date of the argument of the defendants' motion, neither plaintiff nor any attorney appeared in his behalf. Nevertheless, in order to give plaintiff opportunity to make a case, I filed an order on October 18, 1974 directing plaintiff to show cause by December 9, 1974 why the relief sought by the defendants should not be granted. In the order I warned plaintiff that failure to comply "may result in the dismissal of his complaint, the imposition of cost and attorneys' fees, or other sanctions provided" in the Federal Rules of Civil Procedure.

During this period of time, plaintiff appealed the stay order and other orders of this court to the Court of Appeals. These appeals were dismissed by the appellate court on October 12, 1974 for want of jurisdiction.

When the parties appeared before me on December 9, 1974, the plaintiff not only did not file a response to my order of October 18, but said that he considered his answers to the interrogatories sufficient and that he was no obliged to make a further response. Furthermore,

he stated in open court that he would not consent to a dismissal of the action in Civil 1971-592 because he wanted to pursue his rights in 1974-185. Apparently the only explanation for this course of action was that the defendants in Civil 1971-592 had filed motions seeking dismissal of the complaint or for summary judgment. Plaintiff has failed to file responding affidavits to any of these motions, It appeared to the court that he though that he would be able to start all over again in Civil 1974-185.

Although the plaintiff had failed to respond to many of the orders that the court has filed in this action and his conduct was designed to frustrate a responsible approach to a determination of the facts, nevertheless, because he was proceeding pro se and to make sure that there was no misunderstanding. On January 7, 1975 I filed a further order giving plaintiff a further opportunity to respond. In that order I directed that, on or before March 3, 1975, the the plaintiff should file a statement explaining why he should be allowed to proceed in Civil 1974-185, instead of Civil 1971-592.

I directed him to either file an additional answer to the interrogatories or file written objections. In the order I explained that failure to follow the directions of the court "shall result in the imposition of costs against plaintiff and may result in dismissal of both Civil 71-592 and Civil 74-185 on the merits." Plaintiff has failed utterly to comply with the order of January 7, He has not filed any affidavits or objections pursuant to the order.

The time has arrived for final action. The stay in Civil 1974-185 is lifted, and it is ordered that Civil 1974-185 be consolidated with Civil 1971-592, pursuant to Rule 42 of the Federal Rules of Civil Procedure. The relief sought in one action is essentially the relief sought in the other. The court shall consider the motions for summary judgment filed in Civil 1971-592 as part of the proceedings in Civil 1974-185. The plaintiff has failed to respond in any way to the affidavits filed in support of the motions for summary judgment made by the private and the government defendants. Since the facts related in the various affidavits stand uncontroverted, the court will adopt the facts as set forth

therein. There is no need to set out the facts related in the affidavits. I find that the information contained in the affidavits warrants dismissal of the plaintiff's actions. There is further ground for dismissal of both actions. Time and again the plaintiff has failed or refused to follow the direction of the court. He has failed to file objections to interrogatories, to file answering affidavits in support of his resistance to the summary judgment motions, and has failed to file the explanatory affidavits required by the orders, His tactics have been designed to frustrate a reasonable resolution of the problems facing the court and, at times have bordered on the contemptuous. His refusal to follow the directions of the court has required the expenditures of a great deal of time and money on the part of the litigants and the court. Although given every opportunity to make a case and to respond to the motions within the rules, the plaintiff has failed or refused to do so. The motions of the defendants in each case to dismiss plaintiff's complaint are granted.

The clerk is directed to enter judgment in each case in favor of the defendants dismissing plaintiff's complaint with costs.

So ordered.

/s/ JOHN T. CURTIN
JOHN T. CURTIN
United States Disgrict Judge

DATED: July 18, 1975

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON

Plaintiff

vs.

THE STATLER FOUNDATION, et al

Defendants

ORDER

Defendants, The Buffalo Foundation, James H. Cummings Foundation, and The Wurlitzer Foundation, byt their attorneys, having on or about April 19, 1974 served interrogatories addressed to the Amended Complaint herein upon David M. Yellen, Esq., Attorney for the Plaintiff and said interrogatories having been wholly ignored and by reason thereof the said Defendants having moved for an Order, pursuant to Rule 37 (a) (2) of the Federal Rules of Civil Procedure, compelling Plaintiff to answer said interrogatories, and Phillips, Lytle, Hitchock, Blaine & Huber, Robert M. Ritchock, of counsel, having on the return day therefore, on July 29, 1974, appeared in supprt of said motion and David M. Yellen, Esq. having appeared with respect thereto in behalf of Plaintiff, and the Court having directed orally that answers or objections to said interrogatories be served on or before August 12, 1974, and the aforesaid attorneys having appeared before the undersigned on August 12, 1974, and it appearing that no answers or objections to said interrogatories have been served or filed:

Now, therefore, upon the Amended Complaint herein, the answer thereto, the aforesaid interrogatories and the aforesaid

(2)

motion papers and upon motion of Phillips, Lytle, Hitchoch, Blaine & Huber, Robert M. Hitchock of counsel, and there being no opposition thereto, it is hereby

ORDERED that on or before August 26, 1974, full and complete answers be made to each of the aforesaid interrogatories; and it is further

ORDERED that if such full and complete answers are not served and filed as aforesaid, the Court will consider an application pursuant to Rule 37 (a) (4) for an Order requiring Plaintiff to pay themoving defendants the reasonable expenses, including attorneys' fees, incurred in being required to take the measures herein above recited in an endeavor to obtain answers to the said interrogatories.

Dated: August 23, 1974

/s/JOHN T. CURTIN

United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON,
Plaintiff

vs. Civil 1971-592

THE STATLER FOUNDATION, et al.,
Defendants

REV. DONALD L. JACKSON
Plaintiff

vs. Civil 1974-185

THE STATLER FOUNDATION, et al.,
Defendants

After Civil Action No. 1971-592 was returned to this court bye order of the Court of Appeals, plaintiff filed an amended complaint and included as additional defendants the Secretary of the Treasury, the Commissioner of Internal Revenue and the District Direrector at Buffalo, New York. He appeared by counsel DAVID YELLEN. Civil No. 1971-592 is substantially identical to Civil No 1974-592, which was originallyi instituted in the District Court for the District of (2)
Columbia and transferred to this court. On May 6, 1974 this court ordered that any further proceedings in Civil No. 1974-185 be stayed until further order.

At the present time there are several motions pending. One, made by all the private defeddants pursuant to Rule 37, seeks dismissal of the complaint, attorneys' fees and costs on the ground that the answers given by the plaintiff to certain interrogatories filed by the defendants were evasive, incomplete and failed to comply with the rules respecting answers to interrogatories. This motion was originally filed on September 2, 1974, and adjourned by order of the court, for argument, to October 7, 1974. During the week of September 30, 1974, plaintiff and his counsel delivered a writing to the court indicating that Mr. Yellen was no longer plaintiff's counsel and that plaintiff file- desired to proceed pro se in Civil No. 1971-592. Plaintiff file Civil No. 1974-185 pro se and continued to proceed without counsel in that action. The court reluctantly permits the withdrawal of counsel. On October 7, the adjourned date on the argument of the motion to dismiss in Civil No. 1971-592, neither plaintiff nor his counsel appeared.

On October 1, 1974 the United States Attorney, appearing on behalf of the federal defendants who were joined in the amended complaint filed by the plaintiff, filed a motion for summary judgment and to dismiss the complaint pursuant to Rule 56 of the Federal Rules of Civil Procedure.

The Plaintiff is directed to show cause by affidavit not later than December 9, 1974 why the relief sought by the private and the government defendants in this case should not be granted. He may appear by counsel if he desires and, if so, the response prepared bycounsel shall be filed not later than December 9, 1974. In addition to filing an affidavit explaining the delay in the response to the interrogatories or in what manner the esponse to the interrogatories in complete, if that is plaintiff's position, the plaintiff may file objections to the interrogatories of further asnsers to the interrogatories pursuant to the rules. Plaintiff shall also respond to the motion of the United States Attorney, in accordance with the Federal Rules of Civil Procedure, not later than December 9, 1974. No further adjournment will be granted to the plaintiff unless good cause is shown by sworn affidavit in writing.

Failure of the plaintiff to comply with this order may result in the dismissal of his complaint, the imposition of costs and attorneys' fees, or other sanctions provided for in the Federal Rules of Civil Proceedure.

The court will not entertain any further or different motions from plaintiff in these cases until this order is complied with, unless good cause is shown by sworn affidavit.

So ordered.

/s/ JOHN T. CURTIN
JOHN T. CURTIN
United States District Judge

Dated
: October 10, 1974

CERTIFICATE OF SERVICE

I certify that two copies of the Brief, was served upon each Attorney, by leaving two copies at their office and someone signing acknowledging receipt of the two briefs. As to Attorney ~~Donald~~ Donald R. Harter, two copies of the Brief, was mailed to his office postage paid.

Dated: November 21, 1975.

Rev. Donald L. Jackson

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